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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,971	10/15/2003	Andrea Koerselman	42280.2400	7935
20322	7590	02/17/2005	EXAMINER	
SNELL & WILMER ONE ARIZONA CENTER 400 EAST VAN BUREN PHOENIX, AZ 850040001			BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/685,971

Applicant(s)

KOERSELMAN ET AL.

Examiner

Carolyn T Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 2 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The Office action mailed December 28, 2004 was inadvertently connected with this application. For clarification purposes, the Office action mailed December 8, 2004 is the correction action, which Applicant correctly responded in the response filed January 10, 2005.

### ***Election/Restrictions***

2. Applicant's election without traverse of Species I in the reply filed on January 10, 2005 is acknowledged.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 20.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "15" and "16" have both been used to designate a hinged component.

5. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37

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CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

6. Claims 2 and 5 are objected to because of the following:

- Claim 2 recites, "said guide is rotateably attached to said food holder via a hinge." This appears to be incorrect. A better description could read - - said food holder is rotateably attached to said guide via a hinge- -.
- Claim 5, line 1: The term "removeable" is misspelled. The correct spelling is - -removable- -.

Appropriate corrections are required.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3, and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Börner (3,583,454).

Regarding claim 1, Börner discloses a food cutting device comprising: a body having two longitudinal edges (8, 9) and a blade (2) configured such that its cutting edge is a predetermined distance from a plate (1) provided therein; a food holder (12)

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having a guide (21) configured to slideably connect to at least one of said longitudinal edges (8, 9) of said body to thereby bring a good item in contact with said blade (2).

Regarding claim 3, Börner discloses the food holder (12) is configured to slide along an axis parallel to said longitudinal edges (8, 9).

Regarding claim 5, Börner discloses the plate (1) is removable from said body.

Regarding claim 6, Börner discloses the food holder (12) includes a hollow portion (13) and a plunger portion (15).

Regarding claim 7, Börner discloses the food holder (12) including a plurality of protrusions (14) along at least one of its surfaces.

Regarding claim 8, Börner discloses the plunger (15) includes a plurality of protrusions (17) along at least one of its surfaces.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Börner as applied to claim 1 above, and further in view of Petit (6,253,756). Börner fails to disclose the guide is rotateably attached to the food holder via a hinge. However, Petite discloses a cutting device therein the holder (15) is rotateably attached to the guide (5/6) via a hinge (15a/15b). See col. 3, lines 35-37 and 39-41. The hinge allows the device to move from an inactive position to an active position. Therefore, it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to rotateably attach the food holder to the guide via a hinge, as disclosed by Petit, on the Börner device for the purpose of moving the device from an inactive to an active position.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Börner as applied to claim 1 above, and further in view of Kim (5,765,472). Börner fails to disclose the blade is substantially "V"-shaped. However, Kim discloses a food cutting device wherein the blade (24) is substantially "V"-shaped. See FIG 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a substantially "V"-shaped blade, as disclosed by Kim, on the Börner device for the purpose of creating a particular cut.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rubenstein (1,248,166), Popeil (4,038,892), Boerner (5,148,731), Zirkiev (5,745,999), Vincent (6,732,622), Diefenbach (D354,886), Wong (D393,576, D433,594, and D494,025), and Cohen et al (D399,711) disclose food cutting devices.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

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February 15, 2005



Allan N. Shoap  
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